

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in telephone interviews with Monica Kitts on December 4, 2008 and December 5, 2008.

#### In the Claims:

Claim 25, line 1, delete "Synergistic" and insert --- A synergistic --- .

Claim 26, line 1, delete "Synergistic" and insert --- A synergistic --- .

Claim 27, line 2, insert the term "and" after "in claim 1"

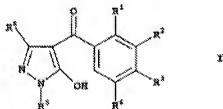
Claim 28, line 2, insert the term "and" after "component C)"

#### Abstract:

Replace the abstract dated January 21, 2005 (filed by applicant in a preliminary amendment) with the following new abstract ---

A synergistic herbicidal mixture comprising

A) at least one 3-heterocyclyl-substituted benzoyl derivative of the formula I



in which the variables have the following meanings: R<sup>1</sup>, R<sup>3</sup> are halogen, alkyl, haloalkyl, alkoxy, haloalkoxy, alkylthio, alkylsulfinyl or alkylsulfonyl; R<sup>2</sup> is a optionally substituted

heterocyclic radical selected from the group: isoxazol-3-yl, isoxazol-4-yl, isoxazol-5-yl, 4,5-dihydroisoxazol-3-yl, 4,5-dihydroisoxazol-4-yl and 4,5-dihydroisoxazol-5-yl; R<sup>4</sup> is hydrogen, halogen or alkyl; R<sup>5</sup> is alkyl, R<sup>6</sup> is hydrogen or alkyl; or one of its environmentally compatible salts;

B) nicosulfuron (II) or one of its environmentally compatible salts; and

C) at least one herbicidal compound from the group triazines or one of their environmentally compatible salts, in a synergistically effective amount. Compositions comprising these mixtures, processes for the preparation of these compositions, and their use for controlling undesirable plants.

- - -.

#### **REASONS FOR ALLOWANCE**

The following is an examiner's statement of reasons for allowance: The closest prior art, Sievernich et al. (CA 2,334,955) teach a synergistic herbicidal mixture comprising at least one 3-heterocycl-yl-substituted benzoyl derivative and a synergistically effective amount of at least one herbicidal compound from the group consisting of acetolactate synthase inhibitors, lipid biosynthesis inhibitors and photosynthesis inhibitors and other herbicides. Sievernich et al. do not sufficiently teach or suggest the specific synergistic ternary combination of A) 4-[2-methyl-3-(4,5-dihydroisoxazol-3-yl)-4-methylsulfonyl-benzoyl]-1-methyl-5-hydroxy-1H-pyrazole, B) nicosulfuron, and C) triazines selected from the group consisting of ametryn, atrazine, cyanazine, desmetryn, dimethamethryn, prometon, prometryn, propazine, simazine,

simetryn, terbumeton, terbutryn, terbutylazine and trietazine, particularly in view of applicant's evidence of nonobviousness set forth in the specification in Tables 3 and 4.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Claims 1, 18, and 25-31 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDRIAE M. HOLT whose telephone number is (571)272-9328. The examiner can normally be reached on 7:00 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richter Johann can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Andriae M. Holt  
Patent Examiner  
Art Unit 1616

/John Pak/  
Primary Examiner, Art Unit 1616